



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning & Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 2400497

Applicant Name: Heather Leaman, for Empire Way Pub

Address of Proposal: 9501 Rainier Avenue South

SUMMARY OF PROPOSED ACTION

Master Use Permit to change the use from general retail store to a drinking establishment (Empire Way Pub). Project includes 120 square feet walk-in cooler addition. Surface parking for two vehicles to be provided on the associated lot behind the commercial building.

The following approval is required:

Administrative Conditional Use: To allow a Drinking Establishment in an NC1-40 zone. (Chapter 23.47.006, Seattle Municipal Code)

SEPA DETERMINATION: ☒ Exempt ☐ DNS ☐ MDNS ☐ EIS
 ☐ DNS with conditions
 ☐ DNS involving non-exempt grading or
 demolition or
 involving another agency with jurisdiction

BACKGROUND DATA

Site and Vicinity Description

The 4,746 square feet commercial building is located at the southeast corner of Rainier Avenue south and 57th Avenue South. The building is currently occupied by five retail sales and service uses. The proposed project is to establish a drinking establishment (Empire Way Pub) and change the use of 1,289 sq. ft. portion of the existing building from retail sales and service to a drinking establishment. The drinking establishment (Empire Way Pub) was formerly located on Martin Luther King Jr. Way south, has to relocate because of the Sound Transit development. The site is located on the northern corner of the existing commercial building exactly at the corner intersection of Rainier Avenue South and 57th Avenue South. The site is zoned Neighborhood Commercial One with a forty foot height limit (NC1-40). According to information submitted by the

applicant, the proposal site has four existing parking spaces located in a basement garage with access available from Ithaca Place South located to the east of the site. Direct pedestrian access to the site is available from Rainier Avenue South and 57th Avenue South. Pedestrian access from the parking garage located at the rear of the lot is available through a flight of stairs on to 57th Avenue, or through Ithaca Place. Abutting the subject site immediately to the east is the Mount Pleasant Baptist Church. Directly opposite the site across Rainier Avenue South is the gated Spinnaker Bay Condominium Community and west of 57th Avenue South are several small retail businesses, restaurants, automobiles and tire repair stations. The NC1-40 zone abuts L-3 zone to the east, Single Family 5000 (SF-5000) zone to the south and NC2-40 zone to the north and west. Development in the vicinity is mixture of commercial, office and residential uses.

Proposal Description

The applicant proposes to change use from a general retail store and service to a drinking establishment (Empire Way Pub). The proposed space is 1,289 square feet. The proposed use will be a beer and wine drinking establishment. The project includes 120 square feet walk-in cooler addition to be located next to the east property line and 6' 7" from the north property line. As a result, the drinking establishment space will increase to 1,409 sq. ft. There are four existing parking spaces on site located in four basement parking garages with access from Ithaca Place via gravel driveway to the east of the commercial building. The applicant is proposing two new parking spaces thus bringing the total number of parking spaces on site to six, therefore meeting the number of parking spaces required by code on site.

Public Comment

DPD received many public comments during the extended comment period, which ended on April 28, 2004. Among the comment letters received were a signed petition of comments containing forty four (44) signatures from residents of the Spinnaker Bay Condominiums, and a chain of comment letters containing thirty (30) signatures from a group of concerned citizen living in proximity to the proposal site. These respondents expressed concerns about the impact of the proposed drinking establishment to the surrounding community. The concerns focused on the following issues:

- Concerns about increased traffic accidents associated with speeding and drunk driving.
- Concerns about lack of parking on site.
- Concern about increased crime and violence, loitering, burglary, rape, drug use and trafficking, and the apparent public nuisance that may follow the abuse of private property in the immediate vicinity of the site.
- Concerns about the affect that these issues will have on the efforts of the joint neighbors, business and community crime watch programs.
- Concerns about noise impacts
- Concern about degradation of the value of residential property in the surrounding area.
- Concerns about proximity to elementary and high schools in the area.

One respondent expressed his opinion in support of the proposal.

ANALYSIS - ADMINISTRATIVE CONDITIONAL USE, (SMC 23.47.006)

- B. The following uses, identified as administrative conditional uses on Chart A, of Section 23.47.004, may be permitted by the Director when the provisions of this subsection and subsections A are met*
- 2. Drinking establishments in NC1 and NC2 zones may be permitted as conditional uses. A drinking establishment in an NC1 or NC2 zone shall be evaluated according to the following criteria:*
- a. The size of the drinking establishment, design of the structure, signing and illumination shall be compatible with the character of the commercial area and other structures in the vicinity, particularly in areas where a distinct and definite pattern or style has been established.*

The proposal will be consistent with the character of the commercial area in part due to the small size of 1,289 square feet. The proposed drinking establishment will replace the previously established retail sales and service use that occupied the same space in the existing commercial building. The project will include the construction of 120 square feet walk-in cooler to be connected to the east wall of the drinking establishment. As a result, the proposed drinking establishment will expand to 1,409 square feet in size. The applicant has proposed minor changes to the exterior features of the existing building which include the removal of the existing door and single pane window fronting the intersection of Rainier Avenue South and 57th Avenue South and to infill the opening with storefront windows. On the southwest corner of the space on 57th Avenue South, the applicant proposes to replace the existing single pane window and wall with a new storefront door and window. The proposed drinking establishment will have two main entrances, one on Rainier Avenue South and the other on 57th Avenue South. Both of these facades are across from commercial zones. In keeping with the character of the commercial area, the applicant has indicated that the existing transparency of the building will be maintained. The new drinking establishment will have a wall sign similar to signage found in the immediate vicinity. Exterior lighting will provide safety to customers including sidewalk illumination at the entry. Interior illumination will be subtle, with a combination of incandescent pendant and indirect fluorescent fixtures.

- b. The location, access and design of parking shall be compatible with adjacent residential zones.*

Seattle Municipal Code (SMC) 23.54.015(c) provides that existing parking deficits of legally established uses shall be allowed to continue even if a change of use occurs. However, when there is a change of use in a portion of an existing multi-use building, Director's Rule 22-86 provides that the number of parking spaces which would be required for the entire building prior to any change of use shall be subtracted from the number of parking spaces required for the entire building after the change of use. If more spaces would be required after the change of use, the difference must be provided. Therefore, basing parking requirement on the use of an entire building, when the use is being changed in some portion of it, is the required method of determining parking requirements for the new use in the building.

According to parking calculations submitted by the applicant on sheet A-0 of the MUP Plans the number of required parking spaces that will be generated by the proposed drinking establishment could be summarized in the following table below;

| Parking | Required-Existing | Proposal |
|------------------------|-------------------|-------------------------------|
| Retail | 6.4 | 5.3 |
| Drinking Establishment | N/A | 3.07 |
| Total | 6 | 8 |
| Difference | | $8 - 6 = 2$ additional spaces |

The current uses will require 6.4 parking spaces for the retail. Because of the four existing parking spaces, 2 deficit credits ($6 - 4 = 2$) exist. According to SMC 23.54.015D, existing legal parking deficits of legally established uses shall be allowed to continue even if a change of use occurs. With the tenant change of use, a total of six parking spaces would be provided pursuant to the Land Use Code requirements. Since four parking spaces already exist on site, the addition of two parking spaces would bring the total to six parking spaces, thus meeting the required parking on site.

On sheet A-0 of the revised MUP Plans, two additional parking spaces have been provided and access to these additional parking spaces is available through Ithaca Place South next to the existing gravel driveway to the parking garages at the rear of the building. The rear southeast portion of the lot abuts a single family zone. This section of the lot which is approximately 80.96 feet in length with an average width of 14.75 feet is Single Family 5000. A 5-foot landscaped buffer between the Single Family 5000 and NC1-40 zone includes screening with a 6-foot high fence. This area is elevated higher than the parking area to the west. The existing access to the parking area is unchanged. Access to the two parking spaces is proposed on the commercially zoned portion of the lot and will be compatible with adjacent residential zones.

- c. Special consideration shall be given to the location and design of the doors and windows of drinking establishments to ensure that noise standards will not be exceeded. The Director may require additional setbacks and/or restrict openings on lots that abut residential zones.*

Noise standards are not expected to be exceeded due to this proposal. The main entrances will be located on Rainier Avenue South and 57th Avenue South. All windows of the future business face public streets and commercially zoned properties located across the streets. No doors or windows of the drinking establishment will face the abutting residentially zoned parcels.

- d. Drinking establishment shall not generate traffic that creates traffic congestion or further aggravates spillover parking on residential streets.*

According to Trip Generation, “7th Edition,” ITE (Institute of Transportation Engineers), the peak PM hour trip generation for a “Drinking Place” is 15.49 trips generated per 1000 square feet of gross floor area. During peak hours for the Tavern use 21.68 trips are anticipated during the peak hour. It is worth noting that peak hours for drinking establishment do not coincide with peak hour of traffic. In relation, for one hour between 4 and 6 pm, when rush hour normally occurs, Trip Generation has an average of 11.34 trips per 1000 square feet of this land use. As the proposed tavern is for 1409 square feet, 15.87 vehicle trips per hour are anticipated from 4 and 6 pm.

Taking into consideration the context of the neighborhood, the proposal area of use, and the proposed establishment layout, it is likely that the proposal will attract a large percentage of walking patrons from the surrounding residential zones. The above ITE cited Trip Generation samples above were taken in more suburban setting where pedestrian walk-ability and community transit are minimal and vehicle travel is more prevalent. The subject proposal is located on two major bus routes and on two arterial streets (Rainier Avenue South and 57th Avenue South respectively). As a result, the traffic impact will most likely be less than the one given above. The proposal will not generate traffic which creates traffic congestion. It should be noted that any change of use or new use (even a use permitted outright) in the proposed space may cause spillover parking onto the streets. For example, if a restaurant were proposed, it would be a use permitted outright, but could cause more spillover parking than the proposal use, depending of course on the popularity of the business.

To demonstrate that the proposed use will not further aggravate spillover parking on residential streets, the Department of Planning and Development (DPD), requested a parking utilization study which was received by the Department on December 17, 2004. The Transpo Group, Inc. by the direction from the Department performed the study within eight hundred (800) feet of the site and submitted two different utilization counts. The first counts was conducted on two weekend days Friday (11-19-2004) and Saturday (11-20-2004) and the second count was conducted on two week days Tuesday (11-30-2004) and Thursday (12-2-2004). The counts were conducted in the evenings between 8:00 and 9:00 PM. These times and days reflect anticipated peak hours for the drinking establishment use. The proponent determined that total number of legal on-street parking spaces (not including the applicant's on site spaces) available within 800 feet of the site is 207.

The parking utilization study shows that 55 spaces were utilized on Friday, November 19, 45 spaces were utilized on Saturday, November 20, 33 spaces were utilized on Tuesday, November 30 and 46 spaces were utilized on Thursday December 2. The existing utilization of the 207 parking spaces during the time periods counted for the study was relatively low, ranging from a low of 33 spaces occupied (16%) to a high of 55 spaces occupied (27%). Based on these utilization rates, there would be sufficient unused on-street parking capacity located within 800 feet to accommodate parking demand that would be generated by the proposed project without adversely impacting existing parking needs in the area.

In the immediate vicinity, the parking counts indicates that there would be approximately 25 to 30 unused on-street parking spaces on 57th Avenue South and Rainier Avenue South within a block of the site that could be used by the project patrons. As a result, it is expected that project parking impacts on the other streets in the study area would be minimal.

CONDITIONAL GENERAL PROVISIONS, SMC 23.47.006:

- A. *All conditional uses shall be subject to the procedures described in Chapter 23.76, and shall meet the following criteria:*
 - 1. *The use shall not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.*

As described above, the 1,409 square feet proposed use should not be a detriment to the public welfare or injurious to property in the area. The proposed drinking establishment will be located in an existing commercial building and will face other commercially zone lots along Rainier Avenue South and 57th Avenue South away from the residential zones to the east and south of the site..

Public comment suggested that the proposal would be a source of increased traffic accidents with speeding, drunken driving, increase crime and violent, loitering, burglary, rape, drug use and trafficking, and apparent public nuisance that may follow the abuse of private property in the vicinity. Other public comments further suggests that the proposed drinking establishment will affect the efforts of the joint neighbors, community and business crime watch programs, and would bring down the value of residential property in the surrounding area.

Although public comments have presented a good scenario of the existing neighborhood problems, no evidence have been presented otherwise to suggest that this drinking establishment or its patrons have a likelihood of perpetuating these problems mentioned above. Therefore, the proposed use would not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

2. *In authorizing a conditional use, adverse impact may be mitigated by imposing any conditions needed to protect other properties in the zone or vicinity and to protect the public interest. The Director shall deny or recommend denial of a conditional use if it is determined that adverse impacts cannot be mitigated satisfactorily.*

No adverse impacts are anticipated from this proposal.

DECISION-CONDITIONAL USE

The conditional use application is **APPROVED.**

CONDITIONS:

None.

Signature: _____ (signature on file) Date: January 20, 2005
Christopher A. Ndifon, Land Use Planner

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